



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA- 2018- 0395; FRL-9982-64-Region 6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Louisiana Department of Environmental Quality (LDEQ) has applied to the Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Louisiana's application, and has determined that these changes satisfy all requirements needed to qualify for final authorization and is proposing to authorize the State's changes. The EPA is seeking public comment prior to taking final action.

DATES: Comments on this proposed rule must be received by **[insert date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: patterson.alima@epa.gov.
- Fax: (214) 665-6762 (prior to faxing, please notify Alima Patterson at (214) 665-8533).

- Mail: Alima Patterson, Regional Authorization/Codification Coordinator, RCRA Permit Section (6MM-RP), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas Texas 75202-2733.

- Hand Delivery or Courier: Deliver your comments to Alima Patterson, Regional Authorization/Codification Coordinator, RCRA Permit Section (6MM-RP), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas Texas 75202-2733.

Instructions: EPA must receive your comments by **[insert date 30 days from the date of publication of the Federal Register]**. Direct your comments to Docket ID Number **EPA-R06-RCRA -2018-0395**. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal regulations.gov web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with CD you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.regulations.gov>).

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>, or in hard copy.

You can view and copy Louisiana's application and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following locations:

Louisiana Department of Environmental Quality 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559 and EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, phone number (214) 665-8533. The public is advised to call in advance to verify business hours. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION, CONTACT: Alima Patterson, Region 6, Regional Authorization/Codification Coordinator, Permit Section (6MM-RP), Multimedia Division, (214) 665-8533, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas Texas 75202-2733, and Email address patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have the EPA made in this rule?

On March 13, 2018, the State of Louisiana submitted a final complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated on January 13, 2015, April 8, 2015 and April 17, 2015, RCRA Cluster XXIV (Checklists 233A, 233B, 233C, 233D2, 233E, 234 and 235), as well as state-initiated changes. The EPA has reviewed Louisiana's application to revise its authorized program and has made a tentative decision that it meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant LDEQ final authorization to operate its hazardous waste program with the changes described in the authorization application, except for federal provisions that were vacated from the January 13, 2015 final rule (Revisions to the

Definition of Solid Waste (DSW)) by the United States Court of Appeals for the District of Columbia Circuit (Am. Petroleum Inst. v. EPA, 862 F.3d 50 (DC Cir. 2017) and Am. Petroleum Inst. v. EPA, No. 09–1038 (DC Cir. Mar. 6, 2018).

LDEQ will continue to have responsibility for permitting treatment, storage, and disposal facilities within its borders, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Louisiana, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this proposed authorization decision?

If Louisiana is authorized for these changes, a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Additionally, such facilities will have to comply with any applicable federal requirements such as, for example, HSWA regulations issued by the EPA for which the State has not received authorization. LDEQ continues to have enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- conduct inspections, and require monitoring, tests, analyses, or reports;

- enforce RCRA requirements and suspend or revoke permits, and
- take enforcement actions after notice to and consultation with the State.

The action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which LDEQ is requesting authorization are already effective under state law, and are not changed by the act of authorization.

D. What happens if the EPA receives comments on this action?

If the EPA receives comments on this proposed action, we will address those comments in our final action. You may not have another opportunity to comment. If you want to comment on this proposed authorization, you must do so at this time.

E. What Has Louisiana Previously Been Authorized?

The State of Louisiana initially received final authorization on February 7, 1985, (50 FR 3348), to implement its base Hazardous Waste Management Program. We granted authorization for changes to their program on November 28, 1989 (54 FR 48889), effective January 29, 1990; August 26, 1991 (56 FR 41958), as corrected October 15, 1991 (56 FR 51762), effective October 25, 1991; November 7, 1994 (59 FR 55368), effective January 23, 1995 (Note: on January 23, 1995 (60 FR 4380), the EPA responded to public adverse comments and affirmed the effective date for the November 7, 1994 final rule). Then on April 11, 1995 (60 FR 18360), the EPA also made administrative corrections for the January 23, 1995 Federal Register document; December 23, 1994 (59 FR 66200), effective March 8, 1995; October 17, 1995 (60 FR 53704), effective January 2, 1996; March 28, 1996 (61 FR 13777), effective June 11, 1996; December 29, 1997 (62 FR 67572), effective March 16, 1998; October 23, 1998 (63 FR 56830), effective

December 22, 1998; August 25, 1999 (64 FR 46302), effective October 25, 1999; September 2, 1999 (64 FR 48099), effective November 1, 1999; February 28, 2000 (65 FR 10411), effective April 28, 2000; January 2, 2001 (66 FR 23), effective March 5, 2001; December 9, 2003 (68 FR 68526), effective February 9, 2004; June 10, 2005 (70 FR 33852), effective August 9, 2005; November 13, 2006 (71 FR 66116), effective January 12, 2007; August 16, 2007 (72 FR 45905), effective October 15, 2007; May 20, 2009 (74 FR 23645), effective July 20, 2009; June 24, 2011(76 FR 122), effective August 23, 2011; June 28, 2012 (77 FR 38530), effective August 27, 2012, September 14, 2015 (80 FR 55032), effective November 14, 2015 and July 13, 2017 (82 FR 32253) effective September 11, 2017. On March 13, 2018, LDEQ submitted a final program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

Since 1979, through the Environmental Affairs Act, Act 449 enabled the Office of Environmental Affairs within the Louisiana Department of Natural Resources, as well as, the Environmental Control Commission to conduct an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97 was adopted, which amended and reenacted La. R. S. 30:1051 et seq. as the Environmental Quality Act, renaming the Environmental Affairs Act (Act 1938 of 1979). This Act created Louisiana Department of Environmental Quality (LDEQ), including provisions for new offices within this new Department of Environmental Quality. Act 97 also transferred the duties and responsibilities previously delegated to the Department of Natural Resources, Office of Environmental Affairs to the new Department. The

LDEQ has lead agency jurisdictional authority for administering the RCRA Subtitle C program in Louisiana. Also, the LDEQ is designated to facilitate communication between the EPA and the State. During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the La. R. S. 30:2011 et seq., allowing LDEQ to reengineer the Department to perform more efficiently and to meet its strategic goals.

It is the intention of the State, through this application, to demonstrate its equivalence and consistency with the federal statutory tests, which are outlined in the United States EPA regulatory requirements under 40 CFR 271 for final authorization. The submittal of this application is in keeping with the spirit and intent of RCRA, which provides equivalent States the opportunity to apply for final delegation to operate all aspects of their hazardous waste management programs in lieu of the federal government. The Louisiana Environmental Quality Act authorizes the State's program, Subtitle II of Title 30 of the Louisiana Revised Statutes.

F. What changes is EPA proposing to authorize with today's action?

On March 13, 2018, the State of Louisiana submitted a final complete program revision application seeking authorization of their changes in accordance with 40 CFR 271.21. Louisiana's program revision application includes revisions to the federal hazardous waste program, as well as state-initiated changes to the state's previously authorized program.

The EPA proposes to authorize, subject to receipt of written comments that oppose this action that the State of Louisiana's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization.

1. Program Revision Changes for Federal Rules

The LDEQ program revisions consist of regulations which specifically govern federal hazardous waste revisions promulgated on January 13, 2015, April 8, 2015 and April 17, 2015 (RCRA Cluster XXIV; Checklists 233A, 233B, 233C, 233D2, 233E, 234 and 235). LDEQ's adoption of the January 13, 2015 final rule (80 FR 1694; Revisions to the Definition of Solid Waste (DSW)), includes provisions that have been vacated by the United States Court of Appeals for the District of Columbia Circuit (*Am. Petroleum Inst. v. EPA*, 862 F.3d 50 (DC Cir. 2017) and *Am. Petroleum Inst. v. EPA*, No. 09–1038 (DC Cir. Mar. 6, 2018)). The impact of the vacatur on the Louisiana hazardous waste program is discussed in Section G of this document. We propose to grant Louisiana final authorization for the requirements which are listed in Table 1.

Table 1. Program Revision Changes for Federal Rules

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Revisions to the Definition of Solid Waste. (Checklist 233A).	80 FR 1694-1814 January 13, 2015.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. LAC Sections 33:V.105.O.2.c, 33:V.105.O.2.c.i- v, 33:V.105.K, 33:V.105.K.2.c-e, 33:V.105.Q, 33:V.105.Q.1, 33:V.105.Q.1.a-i and 33:V.105.Q.2, as amended June 20, 2017.
2. Revisions to the Definition of Solid Waste. (Checklist 233B).	80 FR 1694-1814 January 13, 2015.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. LAC Sections 33:V.109 contained, 33:V109. Hazardous secondary material, 33:V.R.1-2, 33:V.105.R.2.a-e, 33:V.105.R.3, 33:V.105.R.3.a-b, 33:V.105.R.4, 33:V.109.solid waste 2.c,

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
		33:V.109.solid waste.2.d and .33:V.109.sham recycling, as amended June 20, 2017.
3. Revisions to the Definition of Solid Waste. (Checklist 233C).	80 FR 1694-1814 January 13, 2015.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. LAC Section 33:V.109.V.accumulated speculatively, as amended June 20, 2017.
4. Revisions to the Definition of Solid Waste. (Checklist 233D2).	80 FR 1694-1814 January 13, 2015.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. LAC Sections 33:V.109.facility, 33:V.109 Hazardous secondary material generator, 33:V.109 Intermediate facility, 33:V.109 Land-based unit, 33:V.109 Transfer facility, 33:V.105.O.1, 33: V.105.O.1.b, 33: V.105.O.1.d, 33: V.105.O.1.e, 33:V.105.O.1.b, 33:V.105.O.1.d, LAC 33:V.105.O.1.e, 33:V.105.K.2, 33: V.105.K.2.a, 33:V.105.K.3, 33:V.105.K.3.a , 33:V.105.K.3.b, 33:105.K.3.b.i-iv, 33:V.105.K.3.c, 33:V.105.K.3.c.i-v, 33:V.109.solid waste, 33:V.109.solid waste Table 1, 33:V.105.D.1.x, 33:V.105.D.1.x.i - ix, 33:V.105.D.1.y.vi.(f) – incorporate by reference 40 CFR part 261, subpart H (Financial Requirements for Management of Excluded Hazardous Secondary Materials), 33:V.105.D.1.y.vi.(e) – incorporate by reference 40 CFR part 261, subpart M (Emergency Preparedness and Response for Management of Excluded

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
		Hazardous Secondary Materials) and 33: V.322.A, as amended June 20, 2017
5. Revisions to the Definition of Solid Waste. (Checklist 233E).	80 FR 1694-1814 80 FR January 13, 2015.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. LAC Sections 33:V.109. remanufacturing, 33:V.109.solid waste, and 33:V.105.D.1.z incorporate by reference 40 CFR 261.4(a)(27) and part 261, subparts I, J, AA, BB and CC, as amended June 20, 2017.
6. Response to Vacatures of the Comparable Fuels Rule and Gasification Rule. (Checklist 234).	80 FR 18777-18780 April 8, 2015.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. Sections LAC 33:V.109.Gasification (Repealed), 33:V.105.D.1.1.i, 33: V.105.D.1.q (Reserved), as amended June 20, 2017.
7. Disposal of Coal Combustion Residuals from Electric Utilities. (Checklist 235).	80 FR 21302-21501 April 17, 2015.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. LAC Sections 33:V.105.D.2.d.(i)-(ii), and 33:V.105.D.2.d.(ii)(a)-(h), as amended June 20, 2017.

2. State-initiated Changes

In addition to adopting the federal program revisions discussed in Section F.1, LDEQ has made amendments to its regulations that are not directly related to any of the federal rules

addressed in Item F.1. These changes are categorized as follows: (a) changes to clarify previously authorized provisions; (b) re-designations and changes made to conform to the renumbering of state provisions, including corrections to internal references and other typographical errors; (c) new provisions added for equivalency to federal provisions; and (d) removal of provisions in order to clarify the state's regulations, or correct errors or duplications.

LDEQ submitted these state-initiated amendments under the requirements of 40 CFR 271.21(a) and included provisions from the Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Material, Louisiana Hazardous Waste Regulations (LHWR), as amended effective through January 20, 2018. The state's regulations, as amended by these provisions, provide authority which remains equivalent to, and no less stringent than the federal laws and regulations. The EPA has reviewed the state-initiated changes and have determined they satisfy the requirements of 40 CFR 271.21(a).

We are proposing to grant LDEQ final authorization to carry out the state's hazardous waste program, as amended by the state-initiated changes, in lieu of the federal program. In the Tables below, LDEQ provisions annotated with an asterisk are different from the Federal program; details are discussed in Section G. Unless otherwise indicated, the State provisions listed in the Tables in this section are analogous to the indicated RCRA regulations found at 40 CFR as of July 1, 2015. (Note: Some of the state provisions have no direct federal analog but are related to particular paragraphs, sections, or parts of the federal hazardous waste regulations.)

(a) *Changes to clarify previously authorized provisions*

The following state provisions contain state-initiated changes that clarify previously authorized provisions to ensure equivalency to the federal regulations or make the state's regulations more internally consistent.

Table 2a. Changes to clarify previously authorized provisions to ensure consistency and equivalency

State requirement	Analogous Federal requirement
309.L.8.....	270.30(L)(7)
705.B introductory paragraph*.....	124.15(b) introductory paragraph
1103 introductory paragraph	262.11 introductory paragraph
1107.B.1.b.....	262, Appendix, Items 6 and 7
1515.A.4	264.16(a) related
1516.B.5	264.71(a)(3)
1516.B.2.d.....	264.71(b)(4)
3301.G	264.90(f)
3511.C.2.c and .d	264.112(c)(2)(iii) and (iv)
4037.A introductory paragraph.....	279.46(a) introductory paragraph
4053.A introductory paragraph.....	279.56(a) introductory paragraph
4053.B introductory paragraph	279.56(b) introductory paragraph
4071.A introductory paragraph.....	279.65(a) introductory paragraph
4085.A introductory paragraph.....	279.74(a) introductory paragraph
4105.A.1 a	261.6(a)(3)(i)
4407.A.12	265.145(a)(12)
4501.D introductory paragraph.....	265.310(d) introductory paragraph

(b) *Redesignations, revisions to internal references and correction of typographical errors*

The following state provisions contain state-initiated changes made to conform to the renumbering of state provisions, including corrections to internal references and the redesignation of existing provisions to correct provisions' numbering in keeping with the numbering scheme of Louisiana's regulations. Except for the changes at 108.F.4, 108.F.6, 108.G.4 and 108.G.6, the changes were made without affecting the stringency of the state's currently authorized program.

Table 2b. Redesignations and corrections to internal references and other errors

State requirement	Analogous Federal requirement
108.F.4* and F.6*	261.5(f) related
108.G.4* and G.6*	261.5(g) related
517.T.4.c.i.	270.14(c)(4)(i)
1103.D [was 1103.C]	262.11(d)
1903.C and .D [were 1903.B.5.c and .d]	264.191(c) and (d)
1109.E.1.a.i.	262.34(a)(1)(i)
1109.E.7.a	262.34(d)(2)
1109.E.12	262.34(i)
1529.E introductory paragraph	264.77 introductory paragraph
1751.C.4.b.	264.1082(c)(4)(ii)
1901.E	262.34(a)(1)(ii) related
2203.A “Inorganic metal bearing waste”	268.2(j)
2207.C introductory paragraph	268.3(c)
2209.C	268.30(c)
2211.C	268.31(a)(1), 268.31(c)
2216.D	268.34
2221.E.3	268.38
2221.F.5	268.39(e) – (g)
2299, Table 2, Footnote 11	268 related, No direct federal analog
2299, Table 11	268, Appendix VII, Table 1
3001.B.2.e	266.100(b)(2)(v)
3203 introductory paragraph	264.601 introductory paragraph
4301.C [was 4301.B]	265.1(b)
4301.D – D.13.d [was 4301.C – C.13.d]	265.1(c) – 265.1(c)(14)(iv)
4301.D.13.e and (f) [was 4301.C.13.f and (f)]	265.1(c)(14) related; No direct Federal analog
4301.E – .G [were 4301.D – .F]	270.70(a) and (c)
4301.H [was 4301.G]	265.1(d)
4301.I [was 4301.H]	270.70(b)
4301.J [was 4301.I]	265.1(f)
4399.A.9 [was 4399.A.8]	265.141(h)
4513.B.2	265.340(b)(3)

(c) *New state provisions added for equivalency to federal provisions*

LDEQ has adopted the following provisions in order to be equivalent to federal regulations. These state provisions had either not been previously adopted by the state, incorrectly adopted, or had been inadvertently removed from the state's regulations.

Table 2c State Provisions Added for Equivalency	
State requirement	Analogous Federal requirement
1103.C.....	262.11(b)
1109.E.1.a.iv.(b)	262.34(a)(1)(iv)(B)
1516.B.6.....	264.71(e)
1907.G.2.d	264.193(g)(2)(iv)
2245.L.....	268.7(a)(10)
4301.B.....	270.70(a)
4399.A.8	265.141(f) "current plugging and abandonment cost estimate"
4501.D.3	265.340(b)(2)

(d) *Removal of provisions to clarify state regulations or correct errors*

LDEQ has removed the following provisions in order to clarify the state's regulations because they were not part of the authorized program, or correct errors or duplications, making the state regulations more internally consistent and more consistent with federal. The removed provisions can be found in Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Louisiana Hazardous Waste Regulations (LHWR), as amended effective through April 2016.

Table 2d. State Provisions That Have Been Removed	
State requirement	Analogous Federal requirement
537.B.2.f	270.66 related; No federal analog <i>[not part of authorized program]</i>
537.B.2.l	270.66 related; No federal analog <i>[not part of authorized program]</i>
1516.B.5.a and b	264.71(e) <i>[unnecessary or incomplete]</i>

Table 2d. State Provisions That Have Been Removed

State requirement	Analogous Federal requirement
	<i>duplicate</i>
2201.G.3	268.1 related <i>[not part of authorized program]</i>
2203.A “Treatment”	268.2 related, no analog in Part 268 <i>[not part of authorized program]</i>
2221.A & .B	268.13 related <i>[not part of authorized program]</i>
2227.B	268.42(b) <i>[non-delegable; not part of authorized program]</i>
2231.A and .B.....	268.44(a) and (b) <i>[non-delegable; not part of authorized program]</i>
2231.C and .D.....	268.44(d) and (e) <i>[non-delegable; not part of authorized program]</i>
2231.E and .F.....	268.44(f)-(g) <i>[non-delegable; not part of authorized program]</i>
2239	268.5 <i>[non-delegable; not part of authorized program]</i>
2241	268.6 <i>[non-delegable; not part of authorized program]</i>
2299, Table 4.....	268 related, No direct federal analog <i>[not part of authorized program]</i>
2299, Table 12.....	268, Appendix XI <i>[unnecessary or incomplete duplicate]</i>
3511.C.5	264.112(c)(2)(iv) <i>[unnecessary or incomplete duplicate]</i>
4301.C	265.1 (b) & (c) related; 270.70(a) related <i>[unnecessary or incomplete duplicate]</i>
4301.C.14	265.1(f) <i>[unnecessary or incomplete duplicate]</i>
4399.A.6.i “current plugging and abandonment cost estimate”	265.141(f) “current plugging and abandonment cost estimate” <i>[unnecessary or incomplete duplicate]</i>
4399.A.7 “current plugging and abandonment costs”	265.141(f) “current plugging and abandonment cost estimate” <i>[unnecessary or incomplete duplicate]</i>
4999, Appendix F	265.73 related, No direct federal analog <i>[not part of authorized program]</i>

G. Where are the revised state rules different from the federal rules?

1. Evaluation and Analysis on When State Regulations are More Stringent or Broader in Scope than the Federal Regulations

Under 40 CFR 271.1(i), EPA allows states to (1) adopt and enforce requirements which are more stringent or more extensive than those required by the federal RCRA program, and (2) operate a program with a greater scope of coverage than that required by the federal program. To determine whether particular state provisions are more stringent or broader in scope, EPA uses the December 23, 2014 guidance document: “Determining Whether State Hazardous Waste Requirements are More Stringent or Broader in Scope than the Federal RCRA Program.” In the guidance document, EPA uses a two-part test to determine if state regulations are MS or BIS.

The two-part test requires that the following questions be answered sequentially:

- a. Does imposition of the particular state requirement increase the size of the regulated community or universe of wastes beyond what is covered by the federal program through either directly enforceable requirements or certain conditions for exclusion?
- b. Does the particular requirement under review have a counterpart in the federal regulatory program?

If the answer to the first part of the test is yes, then the state requirement is generally considered broader in scope. If the answer is no, then EPA uses the second part of the test to determine whether the state requirement is more stringent or broader in scope. If the state requirement has a counterpart in the federal program, the state requirement is classified as more

stringent. However, if the state requirement does not have a counterpart, it is classified as broader in scope.

State provisions that are broader in scope are not part of the federally authorized program and thus, are not federally enforceable.

2. Louisiana requirements that are broader in scope than the federal program

LDEQ has adopted the Revisions to the Definition of Solid Waste (DSW) Rule published on January 13, 2015 (80 FR 1694). However, the Court of Appeals for the District of Columbia Circuit, Am. Petroleum Inst. v. EPA, 862 F.3d 50 (DC Cir. 2017) and Am. Petroleum Inst. v. EPA, 883 F.3d 918 (DC Cir. 2018) vacated certain aspects of the 2015 federal DSW rule and replaced them with provisions from the 2008 DSW rule, see 73 FR 64668 (October 30, 2008). The Court (1) vacated the federal 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions) (40 CFR 261.4(a)(24)) and the associated provisions at 40 CFR 260.30(f) and 260.31(d); (2) reinstated the transfer-based exclusion at 261.4(a)(24) and (25) from the 2008 rule to replace the now vacated 2015 verified recycler exclusion; (3) vacated Factor 4 of the 2015 definition of legitimate recycling in its entirety (40 CFR 260.43(a)(4)); and (4) reinstated the 2008 version of Factor 4 at 40 CFR 260.43(c)(2) to replace the now-vacated 2015 version of Factor 4.

In order to determine whether the State of Louisiana regulations are more stringent or broader in scope than the federal RCRA program, the EPA used the two-part test described in Section G.1. With respect to the first test, Louisiana regulates the same size of the regulated community and the same universe of hazardous secondary materials as the federal RCRA

program. With respect to the second test, EPA has determined that the following State of Louisiana provisions from the 2015 federal DSW rule are broader in scope: Louisiana Administrative Code (LAC), Title 33, Part V, sections 105.O.1.f [260.30(f)], 105.O.2.d [260.31(d)], 105.D.1.y [261.4(a)(24)] with respect to the verified recycler exclusion and 105.R.5 [260.43(a)(4)] with respect to Factor 4 definition of legitimate recycling.

Due to the vacatur of certain 2015 federal DSW provisions and the reinstatement of 2008 federal DSW provisions, EPA's regulations do not include the provisions that were vacated by the Court.^a Louisiana has adopted these vacated provisions, including the vacated 2015 DSW Factor 4 in the definition of legitimate recycling of hazardous secondary material and the verified recycler exclusion.^b As a result of the federal vacatur, the Louisiana provisions at LAC:33.V.105.O.1.f, 105.O.2.d, 105.D.1.y and 105.R.5 have no direct analogs in the federal regulations. December 23, 2014 guidance supports this conclusion. On page 6, EPA gives this example "...Further, if a state adopts a federal solid or hazardous waste exclusion, but adds additional conditions that must be met for the state exclusion to apply, those additional conditions would be considered outside the scope of the federal program and would not be part of the federally authorized program, although the entity would still be subject to federal enforcement regarding the part of the state regulations which track the federal conditions." Following the vacatur of portions of the federal rules, Louisiana's program effectively contains additional conditions that must be met for the exclusion to apply. This makes the State's additional

^a EPA issued a final rule referred to as the Transfer Base Exclusion reflecting the Court's ruling, see 83 FR 24664 (May 30, 2018).

^b The Federal Register citation for the "2015 DSW rule" is 80 FR 1694, January 13, 2015, and for the "2008 DSW rule" is 73 FR 64668, October 30, 2008.

provisions broader in scope and not part of the federally authorized program, see 40 CFR part 271.1(i)(2).

The LDEQ provisions that are broader in scope than the federal regulations are not part of the program being proposed to be authorized by today's action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Louisiana law. For the purposes of RCRA section 3009, the Agency has determined that the broader in scope provisions are more protective/stricter, thus being within the State's authority to maintain them as part of the State's RCRA program. We make this determination due to the fact that the broader in scope provisions in Louisiana's verified recycler exclusion require additional conditions to be met in order to qualify for the exclusion when compared to the reinstated transfer based exclusion found in 83 FR 24664 (May 30, 2018).

3. Louisiana requirements that are more stringent than the federal program

Louisiana's regulations contain certain provisions that are more stringent than is required by the RCRA program. At LAC 33:V.108.F.4 and 108.F.6, LDEQ requires that in order to be excluded from full regulation, conditionally-exempt small quantity generators who generate acute hazardous waste in quantities less than or equal to the specified quantity limitations must comply with the listed notification, EPA ID number, and container labeling requirements. LDEQ also has the same requirements at LAC 33:V.108.G.4 and 108.G.6 for conditionally-exempt small quantity generators who do not exceed the quantity limitation of 100 kg of hazardous waste. The federal regulations do not include such notification, EPA ID, and labeling requirements at 40 CFR 261.5(f) and (g). These provisions clearly meet the test for regulations that are more stringent

than the federal requirements. This finding is consistent with United States v. Southern Union, 630 F.3d 17 (1st Cir. 2010) and the December 23, 2014 guidance on page 5 where it states “ For example, a state that does not recognize the CESQG or small quantity generators (SQG) categories, or that imposes additional requirements on CESQGs or SQGs, is not increasing the size of the regulated community, since these generators are managing wastes that are regulated as hazardous at the federal level. CESQGs and SQGs are subject to regulation under the federal program in 40 CFR § 261.5 and 40 CFR Part 262, respectively. While the requirements imposed on these entities are not as extensive as those for large quantity generators (LQGs), CESQGs and SQGs are regulated entities under the federal program.” Also see page 7 of the 2014 guidance, where EPA further states that these additional requirements are considered more stringent because they cover the same universe of waste handlers as the EPA rules.

4. Revisions to state procedural provisions

LDEQ has revised the introductory paragraph of LAC 33:V.705.B to allow a final permit decision, or a decision to deny a permit for the active life of a hazardous waste management facility, to become effective upon issuance rather than 30 days after the service of notice of the decision (as found in 40 CFR 124.15(b) introductory paragraph). Under 40 CFR 271.14, states are not required to adopt 40 CFR 124.15; therefore, changes to this state procedural provision do not impact LDEQ’s authorized program.

H. Who handles permits after the final authorization takes effect?

The State of Louisiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA

hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will not issue new permits or new portions of permits for the provisions listed in Table 1 in this document after the effective date of this authorization.

The EPA will continue to implement and issue permits for HSWA requirements for which LDEQ is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C.1151) in Louisiana?

LDEQ is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

J. What is codification and is the EPA codifying Louisiana's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272 subpart T for this authorization of Louisiana's program changes until a later date. In this authorization application, the EPA is not codifying the rules documented in this **Federal Register** notice.

K. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State Authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by

OMB. This action proposes to authorize State requirements pursuant to RCRA 3006, and imposes no additional requirements beyond those imposed by State law. Because this proposed rule is not subject to Executive Order 12866, this proposed rule is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), entitled Reducing Regulations and Controlling Regulatory Costs. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”

(66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-

income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and impose no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 28, 2018.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2018-19195 Filed: 9/4/2018 8:45 am; Publication Date: 9/5/2018]